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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,083	10/31/2003	Wesley Scott Ashton	ASHTON0009	9725

7590  
Wesley Scott Ashton  
8549 Black Foot Court  
Lorton, VA 22079

03/08/2007

EXAMINER

RODRIGUEZ, RUTH C

ART UNIT

PAPER NUMBER

3677

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,083	<b>Applicant(s)</b> ASHTON, WESLEY SCOTT	
	<b>Examiner</b> Ruth C. Rodriguez	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-31,36 and 37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-31,36 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-31, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denny et al. (US 6,047,209) in view of Edwards (US 4,943,274).

Denny disclose a method of dispensing a substance into a mouth wherein the substance is selected from a group consisting of a breath freshener, a medication and a flavoring agent (Abstract). The method comprises the steps of: (a) providing a mouth and tongue stud (103,201) including a means for dispensing a substance formed in a portion of the stud (Abstract). The means of dispensing a substance contains the substance (Abstract); (b) mounting the stud in a fistula of a wearer's tongue or in the wearer's lip (Fig. 3); and (c) dispensing the substance into the wearer's mouth (fig. 3). The stud comprises a bar (404) having ends (Figs. 4 and 5). A first end member (406,501) is attached to one end of the bar and a second end member (402) attached to an other end of the bar. The first end member is removably attached to the one end of the bar (Figs. 4 and 5). Dennis fails to disclose that the stud further comprises a bar having ends, a first end member attached to one end of the bar and a second end

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member attached to another end of the bar where first end member is removably attached to one end of the bar and mounting the stud in the fistula comprises mounting the bar of the stud in the fistula. However, Edwards teaches a removably mounted stud (10) that comprises a stud further comprises a bar (30) having ends, a first end member (50) is attached to one end of the bar and a second end member (16) attached to another end of the bar where first end member is removably attached to one end of the bar (Figs. 1 and 2). The stud is mounted in a fistula in the earlobe of a user by mounting the bar of the stud in the fistula formed in the wearer's earlobe and a substance is dispensed over time into the wearer's earlobe. The stud allows permanent application of the substance into the earlobe of the wearer. Therefore, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention that the bar and the second end member of the stud of Edwards can be applied to the stud disclosed by Denny such that the first end member (501) is connected to one end of the bar of Edwards in such a way that the bar of the modified stud is mounted in a fistula formed in a wearer's tongue or in the wearer's lip as disclosed by Denny while allowing permanent dispensation of the substance into the wearer's mouth. Doing so, allows permanent dispensation of the substance into the wearer's mouth for a prolonged period of time since the stud will be permanently disposed in the fistula of the wearer's mouth.

Denny discloses a method for dispensing a medication in accordance with the steps mentioned above for the rejection of claims 21, 28, 31 and 37. Denny discloses the use of salve, hydrogen peroxide, polysporin and other antibiotic or cleansing fluid as

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the medication. Denny fails to disclose that the substance comprises a breath freshener or a flavoring agent or a breath freshener mixed with a flavoring agent or a medication mixed with a breath freshener or a medicine with a flavoring agent.

However, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention that the substance can comprises a breath freshener or a flavoring agent or a breath freshener mixed with a flavoring agent or a medication mixed with a breath freshener or a medicine with a flavoring agent since the medication will have a flavor to it whether the flavor pleasantly appeals to user or not it is still has a flavor to it and as for the breath freshener, the antibiotic medication will kill also the bacteria that causes bad breath and therefore work as a breath freshener.

The substance is disposed into the wearer's mouth by injecting the substance into the piercing. Although Denny fails to disclose that the substance is disposed by dissolving the substance over time in the wearer's saliva, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have the substance after being injected into the piercing also being dissolved over time in the wearer's saliva since the substance will not be dissolved immediately by the wearer's saliva in the mouth but rather it will take an amount of time for the substance to be completely dissolved.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 21-31, 36 and 37 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Warren, Jr. (US 3,754,332), Lariccia et al. (US 3,943,928), Cournut et al. (US 4,020,558), Harris et al. (US 4,551,329), Garay et al. (US 4,861,268), Stanley et al. (US 5,855,908), Denny et al. (US 6,047,209), Katz (US 6,326,022 B1) and Levy et al. (US 6,592,860) are cited to show state of the art with respect to devices used to deliver a medication or other substance into a wearer's mouth.

Taylor is cited to show state of the art with respect to a dispenser used in the mouth to provide a substance where the substance can be medicine or a mouth freshener.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

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Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

rcr  
March 5, 2007



**ROBERT J. SANDY**  
**PRIMARY EXAMINER**